No. 02–644

NOV 26 2002

In the Supreme Court of the United States

OCTOBER TERM, 2002

JOHN HOFFMAN AND MICHAEL HAHALYAK, PETITIONERS

v.

JAMES JEFFORDS, RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENT UNITED STATES SENATOR JAMES M. JEFFORDS IN OPPOSITION TO THE PETITION FOR CERTIORARI

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NOVEMBER 2002.

QUESTIONS PRESENTED

1. Whether the court of appeals correctly held that petitioners lacked Article III standing to bring this suit, which sought an order compelling United States Senator James M. Jeffords to affiliate with the Republican caucus in the Senate in order to shift control of the Senate from the Democratic to the Republican Party and restore the Republican legislative agenda.

2. Whether the Speech or Debate Clause, art. I, § 6, cl. 1, of the Constitution, the political question doctrine, and the failure of the amended complaint to state a claim upon which relief can be granted also provide ample bases for affirmance.

TABLE OF CONTENTS

	Page
Statement of the Case	1
Reasons for Denying the Writ	3
Conclusion	8

TABLE OF AUTHORITIES

Cases:	
Baker v. Carr, 369 U.S. 186 (1962)	7
Bennett v. Spear, 520 U.S. 154 (1997)	4
Gravel v. United States, 408 U.S. 606(1972)	6
Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992)	5
O'Shea v. Littleton, 414 U.S. 488 (1982)	5
Raines v. Byrd, 521 U.S. 811 (1997)	4
Simon v. Eastern Kentucky Welfare Rights Org., 426 U.S. 26 (1976)	5
U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779 (1995)	7
Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464 (1982)	5
U.S. Const.:	
art. I, § 3, cl. 5	7
art. I, § 5, cl. 1	7
art. I, § 5, cl. 2	7
art. I, § 6, cl. 1	2, 6
art. III, § 2	4
amend. XVII, § 1	3
Rules:	
S. Ct. Rule 10	3
S. Ct. Rule 13	4
S. Ct. Rule 44	3, 4

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Respondent United States Senator James M. Jeffords submits this brief in opposition to the petition for a writ of certiorari filed by petitioners John Hoffman and Michael Hahalyak.

STATEMENT OF THE CASE

This petition arises out of an amended complaint filed by John Hoffman and Michael Hahalyak in the United States District Court for the District of Columbia. Describing themselves as Pennsylvania Republican voters, petitioners alleged that United States Senator James M. Jeffords violated the 14th and 17th Amendments to the United States Constitution, as well as unnamed Vermont state statutes, by leaving the Republican Party during his term of office. Amd. Compl. ¶10, Appendix to Petition (hereinafter "Pet. App.") at 59–60.

Petitioners alleged that they had been "adversely impacted" by Senator Jeffords' becoming an Independent "in that the Republican program to be ushered in by the Republican party nationally has been seriously obstructed by the defendant's unauthorized act in altering party affiliation." *Id.* ¶1, Pet. App. at 53. They claimed that Senator Jeffords' decision to change parties "destroys the confidence of the electorate," "destroys the foundation of good government by lowering the standard of integrity of its representatives," "promotes party raiding which would seriously weaken the stability of the elective process," "undermines the very purpose of anti-raiding statutes," "eliminates the heart of a well balanced political party," and lacked the approval of those who voted for him in the Vermont elections. *Id.* ¶10, Pet. App. at 60. Petitioners asked the district court to order Senator Jeffords to affiliate with the Republican Party, and make that affiliation public in caucusing in the Senate, in order to shift control of the Senate from the Democratic to the Republican Party and restore the Republican legislative agenda. *Id.*, Pet. App. at 62.

In a 19-page memorandum opinion, the district court granted Senator Jeffords' motion to dismiss the amended complaint. Pet App. at 17–51 (175 F. Supp. 2d 49 (D.D.C. 2001) (Lamberth, J.)). The district court held that the petitioners did not satisfy any of the three irreducible minimum requirements to establish Article III standing. *Id.* at 23–47 (175 F. Supp. 2d at 54–60). Other grounds, not addressed by the district court because of petitioners' lack of standing, *id.* at 47 (175 F. Supp. 2d at 60), also required dismissal of the amended complaint: (i) the Speech or Debate Clause, art. I, §6, cl. 1, of the Constitution immunized Senator Jeffords from suit; (ii) the political question doctrine barred the suit; and (iii) the amended complaint failed to state a claim upon which relief could be granted.

Petitioners appealed the judgment to the United States Court of Appeals for the District of Columbia Circuit, No. 02–5006, and then petitioned this Court for a writ of certiorari before judgment, No. 01–1447 (docketed Apr. 3, 2002). The D.C. Circuit denied petitioners' motion to hold their appeal in abeyance and summarily affirmed the judgment dismissing the amended complaint, because "[t]he district court correctly determined that appellants lacked standing to challenge Senator Jeffords's change in party affiliation, as appellants failed to demonstrate an injury that is personal, actual, traceable to Jeffords's conduct, or likely to be redressed by a favorable decision." Pet. App. at 65 (2002 WL 1364311 (D.C. Cir. May 6, 2002) (No. 02–5006) (per curiam) (Ginsburg, C.J., Rogers, Garland, JJ.)).

This Court denied the petition for certiorari (which, although filed before judgment, was now post-judgment) on June 3, 2002. Pet. App. at 65–66 (122 S. Ct. 2328 (No. 01–1447)). The D.C. Circuit denied the petition for rehearing and petition for rehearing en banc on July 17, 2002. Pet. App. at 66.

By the time the 108th Congress convenes in January, party control of the Senate will have returned to the Republicans, not because of Senator Jeffords' actions or intervention by the courts, but because of the composition of the Senators "elected by the people [of each State]," U.S. CONST. amend. XVII, § 1, in the 2002 election.

REASONS FOR DENYING THE WRIT

The petition for a writ of certiorari should be denied because it fails to raise any "compelling" federal question, Sup. Ct. Rule 10, warranting this Court's attention.[1] The

[1] There may also be a question whether this petition is a consecutive petition, or out-of-time petition for rehearing, that may not be filed under Sup. Ct. Rule 44.4. Although petitioners' prior petition was filed before judgment in the court of appeals, it was denied on June 3, 2002, after the D.C. Circuit's entry of judgment on May 6, 2002. The instant petition was filed on October 11, 2002, within 90 days of the July 17, 2002 denial of their rehearing petition in the court of appeals, *see* Sup.

Continued

decision below is in harmony with decisions of this Court and of other circuits and reflects a proper understanding and application of established principles delimiting the jurisdiction of federal courts under Article III of the Constitution.

I. Article III confines the jurisdiction of the federal courts to the resolution of actual "Cases" and "Controversies." U.S. CONST. art. III, §2. To meet this threshold jurisdictional requirement, petitioners must demonstrate that they suffered (i) an "'injury in fact'—an invasion of a judicially cognizable interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical"; (ii) a causal connection between the injury alleged and the conduct complained of; and (iii) a likelihood that the injury is redressable through a favorable disposition of the matter. *Bennett v. Spear*, 520 U.S. 154, 167 (1997). The court of appeals correctly held that petitioners failed to satisfy any of these three irreducible constitutional minimum requirements.

First, petitioners did not establish "injury in fact." The gravamen of their claim of purported "obstruction" of the "Republican program" alleges a generalized diminution of political power that cannot establish "injury in fact" as to them. Amd. Compl. ¶¶1, 6, Pet. App. at 53, 55–58; *Raines v. Byrd*, 521 U.S. 811, 821, 826 (1997) ("claim of standing . . . based on a loss of political power" or "diminution of . . . official power" too abstract to state cognizable claim under Article III). Nor did they suffer any "injury in fact" from Senator Jeffords' alleged violation of Vermont election laws. As Pennsylvania residents, petitioners had "absolutely no personal stake whatsoever" in Vermont elections. Pet. App. at 34 (175 F. Supp. 2d at 56). Further, petitioners did not allege, and "utterly failed" to explain, how they suffered any personal injury resulting from the claimed abridgement of their 1st Amendment

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Ct. Rule 13, but not within 25 days of this Court's denial of their initial petition, *see* Sup. Ct. Rule 44.2.

right to freedom of association. *Id.* at 35 (175 F. Supp. 2d at 56).

Petitioners' remaining allegations concerning the diminished "confidence of the electorate," the "stability of the elective process," destruction of the "foundation of good government," and similar claims are quintessential "generalized grievances" that cannot confer standing. *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 475 (1982). "Abstract injury is not enough," *O'Shea v. Littleton*, 414 U.S. 488, 494 (1974), and the court of appeals correctly determined that the petitioners alleged nothing more.

The courts below also correctly held that none of the petitioners' alleged injuries was "fairly traceable" to Senator Jeffords, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992), as opposed to "some third party not before the court." *Simon v. Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26, 41–42 (1976). Whether the objectives of the "Republican program" are achieved is "fairly traceable" to the collective actions of both Houses of Congress and the President, not a single Senator. Pet. App. at 41–42 (175 F. Supp. 2d at 58). Indeed, following the November 2002 election, not even party control of the Senate is traceable to Senator Jeffords' challenged action, as the Republicans will achieve majority status in the Senate in the 108th Congress irrespective of Senator Jeffords' caucusing decision.

Further, because petitioners failed to identify any specific injuries caused by alleged violations of the 1st Amendment or Vermont election law, such injuries are not fairly traceable to Senator Jeffords. *Id.* at 42–43 (175 F. Supp. 2d at 58). Nor are harms associated with petitioners' generalized grievances. Finally, to the extent there exists any diminution in the "confidence of the electorate" or the "stability of the elective process," such injuries cannot be "fairly trace[d]" to Senator Jeffords' decision to leave the Republican Party. *Id.* at 43–44 (175 F. Supp. 2d at 58–59).

Third, the courts below correctly held that petitioners' alleged injuries would not be redressed by a favorable decision. *Id.* at 44–47 (175 F. Supp. 2d at 58–59). Even assuming Senator Jeffords' return to the Republican caucus, which, as noted, would no longer be dispositive of party control in the Senate, it cannot be assumed to be "likely" that unspecified Republican political objectives would be achieved as a result. As the November 2002 election demonstrates, "there are numerous factors, independent of Senator Jeffords, that can affect whether a particular piece of legislation is enacted." *Id.* at 45 (175 F. Supp. 2d at 58–59). Similarly, petitioners' purported 1st Amendment and Vermont election law violations cannot be redressed because they were neither alleged in the amended complaint nor explained in the petitioners' submissions. *Id.* at 46 (175 F. Supp. 2d at 58–59). The same is true with respect to petitioners' generalized grievances. Reinstating the Republican majority in the Senate would not itself restore "confidence in the electorate," rebuild the "foundation of good government," or remedy any of petitioners' other nonjusticiable allegations of generalized harms. *Id.* at 46–47 (175 F. Supp. 2d at 59–60).

II. Dismissal was also mandated by the Speech or Debate Clause, art. I, §6, cl. 1, of the Constitution, which provides that "[f]or any Speech or Debate in either House, [Senators and Representatives] shall not be questioned in any other Place." The Clause affords absolute immunity from judicial inquiry into "the deliberative and communicative processes by which Members participate in . . . matters which the Constitution places within the jurisdiction of either House." *Gravel v. United States*, 408 U.S. 606, 625 (1972). Petitioners seek to question Senator Jeffords about his "speech" with his Senate colleagues stating his political affiliation and his decision to "debate" legislative matters in the Democratic, rather than the Republican, caucus. Such speech and associative activities in party conferences are at the core of the "deliberative and communicative processes by which Members participate in" the Senate's legislative proceedings. *Id.* Senator

Jeffords' attendance and participation in a party caucus in the Senate, therefore, "shall not be questioned in any other Place."

The political question doctrine also supported dismissal. *First*, there has been "a textually demonstrable constitutional commitment of th[is] issue to a coordinate political department," *Baker v. Carr*, 369 U.S. 186, 217 (1962), because adjudication of this suit would improperly intrude into the constitutionally committed responsibilities of the Senate to choose its officers, art. I, §3, cl. 5, determine its rules of proceedings, art. I, §5, cl. 2, and judge elections, returns, and qualifications of its Members, art. I, §5, cl. 1. *Second*, there is a "lack of judicially discoverable and manageable standards for resolving" this case, *Baker*, 369 U.S. at 217, because there is no principle from which a court could derive guidance in order to take command of the Senate's internal organization to dictate which party should control the Senate under its rules. *Third*, this action cannot be adjudicated in accord with the "respect due coordinate branches of government," *id.*, because the relief petitioners request would require the Court to intrude into the Senate's internal organization and management.

This suit is also subject to dismissal on the merits. The 1st, 14th, and 17th Amendments to the Constitution do not prohibit a United States Senator from changing his party affiliation during his term of office. Nor do the Vermont election laws cited by petitioners. Such laws do not purport to regulate any conduct after election and could not be interpreted so as to impose a restriction of party membership or loyalty on a senator's service. *See U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 782 (1995) ("States lack the power to add qualifications" for service in Congress to those fixed in Constitution).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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NOVEMBER 2002.

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